



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE461

Marine Mammals; Pinniped Removal Authority; Revised Authorization

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce (NOAA).

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of a revised authorization to the states of Oregon, Washington, and Idaho (states) for lethal removal of individually identifiable predatory California sea lions (*Zalophus californianus*) in the vicinity of Bonneville Dam to minimize pinniped predation on Pacific salmon and steelhead (*Oncorhynchus spp.*) listed as threatened or endangered under the Endangered Species Act (ESA) in the Columbia River in Washington and Oregon. This authorization is pursuant to the Marine Mammal Protection Act (MMPA).

ADDRESSES: Additional information about our determination may be obtained by visiting the NMFS West Coast Region's website: <http://www.westcoast.fisheries.noaa.gov>, or by writing to us at: NMFS West Coast Region, Protected Resources Division, 1201 Lloyd Blvd, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson at the above address, by phone at (503) 231-2226, or by e-mail at, robert.c.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 120 of the MMPA (16 U.S.C. 1361, *et seq.*) allows the Secretary of

Commerce, acting through the Assistant Administrator for Fisheries, and the West Coast Regional Administrator of NMFS, the discretion to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on salmonids that are either: (1) listed under the ESA, (2) approaching a threatened or endangered status, or (3) migrate through the Ballard Locks in Seattle. The authorization applies only to pinnipeds that are not: (1) listed under the ESA, (2) designated as depleted, or (3) designated a strategic stock.

On January 27, 2016, NMFS received an application from the states to reauthorize the 2012 MMPA section 120 authorization through June 30, 2021. On March 28, 2016, NMFS published a notice in the **Federal Register** (81 FR 17141), announcing receipt of the states' application, and soliciting public comments on the application and any additional information that NMFS should consider in making its decision. On May 31, 2016, NMFS reconvened the Pinniped-Fishery Interaction Task Force (Task Force), which was open to the public, and during which it reviewed the states' application, public comments on the application, and other information related to sea lion predation on salmonids at Bonneville Dam. The Task Force completed and submitted its report to NMFS on June 22, 2016. Thirteen of the fourteen members recommended that NMFS approve the states' extension request, with one member dissenting. All decision documents, including a copy of the new authorization, are available on NMFS's West Coast Region web page (see ADDRESSES).

As part of the MMPA section 120 process, subsection (c)(5) states that after implementation of an approved application, the Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional

actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

Because the results of the final year of implementation were not available at the time the 2012 authorization was set to expire, NMFS deferred the assessment of the effectiveness of the permitted intentional lethal taking until that information became available. In the interim, NMFS granted the states' request for a renewal on June 28, 2016, resulting in a new 5-year authorization starting July 1, 2016.

On March 1 and 2, 2017, NMFS reconvened the Task Force to evaluate the effectiveness of the states permitted intentional lethal taking at Bonneville Dam during the years 2012 through 2016. One of the recommendations provided to NMFS by the Task Force was to change the criteria in Term and Condition 1 of the June 28, 2016, authorization to expedite adding California sea lions to Appendix 1, thus expediting the process for identifying specific California sea lions for removal (*i.e.*, placement in permanent captivity or killing).

Currently, the states' MMPA section 120 authorization permits the states to lethally remove no more than 92 California sea lions annually. The program has never been fully implemented to achieve that level and as a result many believed it has not been as effective as it could be. Some Task Force members thought that increasing the number of individual California sea lions on the list of animals approved for removal might allow for increases in removal and a decrease in predation, while others recognized that staffing and resource limitations may prevent full implementation. Because individual residence time of California sea lions has decreased, there are fewer days/time that observers may see an animal eating salmon at the dam. Consideration was given to changing the criteria in the current Authorization to one or more of the following:

a. An animal may be removed if it is individually identifiable and has been seen eating salmon, **or** has been observed in the observation area for x days. (See options below for new number of days).

Option 1: Use data to analyze the probability of consumption of at-risk salmonids based on how many days an animal has been in the area. Then use this number to determine the appropriate number of observation days needed.

Option 2: Reduce the number of days of observation from 5 days to 3 days, regardless of a probability analysis;

Option 3: Reduce the number of days of observation from 5 days to 2 days, regardless of a probability analysis.

Based on the Task Force recommendation (Option 1), the states requested that the U.S. Army Corps of Engineers Fisheries Field Unit (FFU) conduct an analysis to examine whether the changes proposed by the Task Force would improve the ability to identify animals for removal. The FFU analyzed the data presented in 2015 by the states in the Bonneville Field Report for the number of California sea lions that could have been qualified for removal if the conditions of “five days observed **and** one salmonid kill” were changed to “five days observed **or** one salmonid kill.” Findings indicated that changing the criteria would have led to a 66 percent increase in the number of California sea lions added to the removal list. Changing criteria from “and” to “or” would therefore significantly improve the effectiveness of the state’s lethal removal program.

Findings

Based on the results of the FFU evaluation of the Task Force recommendation, on February 6, 2019, NMFS received a letter from the states and the Columbia River Intertribal Fish Commission requesting that we formally adopt the Task Force recommendation to change the

“and” to “or” in Term and Condition 1 in the June 28, 2016, authorization. At the request of the states, NMFS adopts the Task Force recommendation to change the criteria in Term and Condition 1 of the state’s 2016 MMPA section 120 authorization. All other Terms and Conditions in the June 28, 2016, authorization remain unchanged. For the revised Term and Condition, NMFS incorporated provision “c” in Term and Condition 1 into both criteria “a” and “b” for clarity and readability.

As required under section 7(a)(2) under the ESA, NMFS has previously completed formal consultation, and in accordance with the National Environmental Policy Act (NEPA), in 2016 NMFS completed a supplemental environmental assessment (EA) to the 2008 EA with a finding of no significant impact. The proposed action (issuing the states a revised MMPA section 120 authorization) does not require reinitiation of consultation under ESA Section 7 (WCR-2016-4754) as none of the reinitiation requirements in 50 CFR 402.16 have been met. Similarly, we have determined that the existing 2016 Supplemental Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) remain valid because the new circumstances and/or information relevant to environmental concerns and bearing on the proposed action or its impacts are not significant under NEPA because the changes to the proposed action that are relevant to environmental considerations are not substantial, and because the proposed changes will have no direct, indirect, or cumulative effects and are within the range of effects on all resources considered in our 2016 EA and FONSI.

In considering a state’s application to lethally remove pinnipeds, NMFS is also required, pursuant to section 120(b)(1) of the MMPA, to determine that individually identifiable pinnipeds are having a significant negative impact on the decline or recovery of at-risk salmonid fishery stocks. We determined that changing criteria from “and” to “or” would not change our

determination that the MMPA section 120 individually identifiable and significant negative impact requirements in section 120(b)(1) have been met. The proposed criteria only change the process, not the standard, by which such animals are deemed qualified for removal, and is consistent with our previous MMPA section 120 decisions that pinnipeds collectively are having a significant negative impact on ESA-listed salmon and steelhead in the vicinity of Bonneville Dam, and are also deemed to be major contributors to detrimental impacts on ESA-listed salmonids because they have been documented to prey on ESA-listed salmonids, are repeat offenders, and persist in the action area after being exposed to nonlethal deterrence.

Based on these requirements, considerations, and analyses, NMFS has determined that the requirements of section 120 of the MMPA have been met and it is therefore reasonable to issue a revised authorization to the states for the lethal removal in the vicinity of Bonneville Dam of individually identifiable predatory California sea lions through 2021.

Dated: April 30, 2019.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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